Supreme Court, U.S.
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MAR 16 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1204

UNITED STATES SUPREME COURT

October Term, 1988

ALFRED AVINS and NORTHERN VIRGINIA LAW SCHOOL, Petitioners,

v.

VIRGINIA COUNCIL OF HIGHER EDUCATION, STANLEY E. HARRISON, JOAN S. JONES, WILLIAM C. BATTLE, ROBERT L. BURRUS, WHITTINGTON W. CLEMENT, BERNARD J. HAGGERTY, RUBY G. MARTIN, HUGH L. PATTERSON, ABE J. SPERO, WILLIAM B. SPONG, Jr., STEPHEN J. WRIGHT, and ATTORNEY GENERAL MARY SUE TERRY by RICHARD C. KAST,
Respondents

Petition for a Writ of Certiorari to the Supreme Court of Virginia

REPLY BRIEF

ALFRED AVINS
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370-3010

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REPLY BRIEF

The Attorney-General's brief in opposition is seriously misleading, both as to alleged question presented, factual statements, reasons for denying the writ, and documents appended thereto. This brief relates not to this case but to a companion case now pending before the Virginia Court of Appeals.

The confusion arises from the bifurcated appellate structure in Virginia. Both appeals from state administrative agencies and original actions against its members under 42 U.S.C. sec. 1983 are heard in the state trial court of general jurisdiction, the Circuit Court. However, decisions of the Circuit Court affirming the agency's action are taken to the Court of Appeals, while dismissals of complaints brought under 42 U.S.C. sec. 1983 are taken to the state Supreme Court. The Supreme Court has rendered a final judgment against pe-

titioners in the 1983 complaint while the Court of Appeals has not yet heard the administrative appeals. The question allegedly presented, the documents set forth in the Appendix, and the bulk of the Attorney-General's statement of the case and the reasons set forth for denying the writ relate to the Council's position in the administrative appeal and totally ignore the complaint under 42 U.S.C. sec. 1983, the anti-trust claim, and the other federal claims of petitioners.

It is amazing to find the Attorney-General asserting:

> "The Council has not told NVLS what it can or cannot teach, nor has it told Avins what he can or cannot say." (Brief in opposition, page 3)

This brief in opposition is signed by Assistant Attorney General Richard C. Kast as "Counsel of Record," the very same Assistant named in the caption of this case because he signed the letter of May 7,

1987, which the Circuit Court Judge explicitly held did not violate petitioners' First Amendment rights. (see app., p. 14) A copy of this letter is appended to this reply brief, and it clearly forbids petitioners to teach the conservative law summer course under threat of criminal and injunctive sanctions.

Contrary to the Attorney-General's assertion, there is no action for damages against the Council members based on this letter pending in any other court, nor is this letter the subject of injunctive proceedings either, elsewhere. Therefore, if the petition is not granted, NVLS and Avins will be without remedy for a clear infringement on their right of freedom of speech. The right of conservatives to teach law can only be vindicated if the petition is granted, and accordingly, the petition should be granted.

Respectfully submitted, ALFRED AVINS
Atty. for NVLS and pet. pro se.

March 1, 1989

APPENDIX

COMMONWEALTH OF VIRGINIA
Office of the Attorney General

May 7, 1987

Dear Dr. Avins:

The State Council of Higher Education met yesterday and considered the course offering in "conservative law" which you forwarded to me. The Council wished me to express to you its concern that your proceeding to offer this course is in contravention of its action in August of last year in declining to extend the period of limited provisional approval of the Northern Virginia Law School ("the School") to grant the J.D. degree. The Council is concerned that you would proceed to offer this course and wished me to call to your attention the following facts:

1. You have no authority to offer course credit toward the J.D. degree to students outside the School, nor to offer course credit for such non-required courses as this even to the students of the School.

-al-

2. Offering this course in clear contravention of the Council's action, and with full knowledge that you have no authority to award course credit, may constitute consumer fraud, a matter being explored by this Office at this time.

3. Violation of the pertinent statutes of the Council regarding its authority to authorize the granting of degree credit constitutes a criminal violation.

The Council would urge you to decline to teach this course until your administrative appeal is resolved. While the Council has not at this point decided to initiate injunctive action against you, when it next meets on June 3, 1987, it will again consider this matter and what action, if any, you have taken to resolve the issues addressed in this letter.

Sincerely,

s/

Richard C. Kast
Assistant Attorney General